

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**JERMAINE E.WINKFIELD,**

**Plaintiff,**

**-against-**

**11 Civ. 0983 (PGG)  
JUDGE GARDEPHE**

**PARKCHESTER SOUTH CONDOMINIUM,  
INC.; INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, LOCAL 808,**

**Defendants.**

**ANSWER AND  
AFFIRMATIVE  
DEFENSES**

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Defendant International Brotherhood of Teamsters, Local 808, through undersigned counsel, hereby answers Plaintiff's Complaint For Employment Discrimination, as follows:

**ANSWER**

**I. PARTIES IN THIS COMPLAINT**

1. Defendant admits the allegations in Paragraph I.A. of Plaintiff's Complaint.
2. Defendant admits the allegations in Paragraph I.B. of Plaintiff's Complaint.
3. Defendant admits the allegations in Paragraph I.C. of Plaintiff's Complaint.

**II. STATEMENT OF CLAIM**

4. Defendant denies the allegations in Paragraph II.A. of Plaintiff's Complaint.
5. Defendant denies the allegations in Paragraph II.B. of Plaintiff's Complaint.
6. Defendant denies the allegations in Paragraph II.C. of Plaintiff's Complaint.
7. Defendant denies the allegations in Paragraph II.D. of Plaintiff's Complaint, except that Defendant admits that Plaintiff has described his race as African American and admits that Plaintiff's date of birth is correct as pled in the Complaint.

8. Defendant denies the allegations in Paragraph II.E. of Plaintiff's Complaint.
- Defendant denies all allegations of discrimination and/or unlawful conduct alleged in the additional support materials attached to Paragraph II.E. of Plaintiff's Complaint.

### **III. EXHAUSTION OF FEDERAL ADMINISTRATIVE REMEDIES**

9. Defendant admits the allegations in Paragraph III.A. of Plaintiff's Complaint.
10. Defendant admits the allegations in Paragraph III.B. of Plaintiff's Complaint.
11. Defendant lacks knowledge and/or information sufficient to form a belief as to any allegations in Paragraph III.C. of Plaintiff's Complaint.

### **IV. RELIEF**

12. Defendant denies the allegations in Part IV. of Plaintiff's Complaint. Defendant denies that Plaintiff is entitled to any relief sought.
13. Defendant denies any and all allegations of Plaintiff's Complaint For Employment Discrimination not expressly admitted herein.

### **AFFIRMATIVE DEFENSES**

#### **FIRST DEFENSE**

Plaintiff has failed to state a claim against Defendant International Brotherhood of Teamsters, Local 808, as the exclusive collective bargaining representative of bargaining unit employees covered by a collective bargaining agreement with his Employer, under Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e to 2000e-17, the New York Human Rights Law, N.Y.

Exec. Law §§ 290 to 297 or the New York City Human Rights Law, N.Y. City Admin. Code §§ 8-101 to 131.

## **SECOND DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations, including but not limited to, the six-month limitation period established under Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983) and the applicable limitation periods established or borrowed under federal statutes, federal common law and the laws of the State of New York.

## **THIRD DEFENSE**

Plaintiff's claims challenging the application of a bona fide seniority system in a collective bargaining agreement are barred by the provisions of Title VII, 42 U.S.C. § 2000e-2(h) and under similar provisions of the New York Human Rights Law, N.Y. Exec. Law §§ 290 to 297 or the New York City Human Rights Law, N.Y. City Admin. Code §§ 8-101 to 131.

## **FOURTH DEFENSE**

Defendant International Brotherhood of Teamsters, Local 808 is not liable for an employer's discrimination in the workplace where the union did not "cause[s] or attempt[s] to cause an employer to discriminate against an individual" in violation of Title VII, Section 2000e-2, 42 U.S.C. §2000e-2(c)(3), or in violation of similar provisions of the New York Human Rights Law, N.Y. Exec. Law §§ 290 to 297 or the New York City Human Rights Law, N.Y. City Admin. Code §§ 8-101 to 131.

#### **FIFTH DEFENSE**

Defendant International Brotherhood of Teamsters, Local 808 fulfilled its representational responsibilities with regard to Plaintiff's service at his Employer's workplace without discrimination, without arbitrary or perfunctory action and fairly and effectively in all respects.

#### **SIXTH DEFENSE**

Plaintiff has failed to comply with the jurisdictional prerequisites for relief required by the administrative procedures under Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e to 2000e-17, the New York Human Rights Law, N.Y. Exec. Law §§ 290 to 297 and/or the New York City Human Rights Law, N.Y. City Admin. Code §§ 8-101 to 131.

#### **SEVENTH DEFENSE**

Plaintiff's claims are barred by a written Statement of Release, formally executed in the State of New York by Plaintiff on April 28, 2009, that is clear and unambiguous on its face and which was knowingly and voluntarily entered into by Plaintiff.

#### **EIGHTH DEFENSE**

Plaintiff's claims for relief are barred by failure to mitigate damages.

**WHEREFORE**, Defendant International Brotherhood of Teamsters, Local 808 requests that Plaintiff's action be dismissed with prejudice, that judgment be entered in favor of said Defendant and that the Court award said Defendant's attorneys' fees and costs, together with such other and further relief as this Court shall deem just and reasonable.

Dated: Jackson Heights, New York  
June \_\_, 2011

Respectfully submitted,

/s/ James F. Wallington

JAMES F. WALLINGTON (D.C. Bar # 437309)  
Baptiste & Wilder, P.C.  
1150 Connecticut Avenue, N.W., Suite 315  
Washington, DC 20036-4104  
Tel: (202) 223-0723/Fax: (202) 223-9677  
Email: [jwallington@bapwild.com](mailto:jwallington@bapwild.com)  
Pro Hac Vice Motion pending

/s/

M. Suzette Rivera (Bar Code MS5304)  
M. Suzette Rivera Esq., P.C.  
84-30 Roosevelt Avenue  
Jackson Heights, NY 11372  
Tel.: (718) 458-2929  
Fax: (718) 458-9517  
Email: [msrivera@msrlaw.com](mailto:msrivera@msrlaw.com)

Attorneys for Defendant International Brotherhood of Teamsters, Local 808